DOCKET FILE COPY ORIGINAL

RECEIVED

JAN - 7 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

COMMENTS ON PETITIONS FOR RECONSIDERATION

The Consumer-Business Coalition for Fair Payphone-800 Fees ("Consumer-Business Coalition"),[1] by its attorneys and pursuant to 47 C.F.R. § 1.429, hereby submits its comments on the petitions for reconsideration of the Commission's Second Report and Order[2] filed in the above-captioned proceeding. The Consumer-Business Coalition opposes those petitions that request an increase in the per-call compensation rate for subscriber 800 and access code calls placed from payphones, and supports those petitions that seek a reduction in that rate. Accordingly, the Consumer-Business Coalition strongly urges the Commission to reexamine its decision to adopt a "market-based" surrogate for payphone 800 calls in lieu of adopting an incremental cost-based rate.

1/ The Consumer-Business Coalition's members include: the American Trucking Associations, Air Transport Association of America, Consumer Federation of America, AAA, National Network to End Domestic Violence, Truckload Carriers Conference, American Movers Conference, Transportation Intermediaries Association, American Airlines, Nabisco, Inc., Virtual Voice Corporation, Small Business Legislative Council, and the International Communications Association.

2/ In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Second Report and

No. of Copies rec'd 0+4
List A B C D E

I. THE COMMISSION'S $0.284 PER-CALL PAYPHONE COMPENSATION RATE IS CONTRARY TO, AND UNDERMINES THE OBJECTIVES OF, THE COMMUNICATIONS ACT

The Telecommunications Act of 1996 ("1996 Act") requires that payphone providers receive "fair compensation for each and every completed interstate call."[3/] In embracing a surrogate for non-payphone coin calls, based on a quasi-monopoly deregulated coin rate, the Commission significantly exceeded this "fair compensation" standard. Moreover, the Commission's reliance solely on independent payphone provider ("IPP") costs to establish this "market-based" surrogate resulted in a vastly overstated default per-call compensation rate for all payphone providers. The Commission's decision to disregard the good judgment it previously exhibited in the local competition proceeding to adopt an incremental cost-based rate, together with its erroneous costing methodology, has resulted in a tremendous windfall for payphone providers to the detriment of 800 subscribers and consumers in general.

A. The Commission Erred in Selecting a Market Surrogate for Subscriber 800 and Access Code Calls

As suggested by AT&T Corp. ("AT&T"), Mobile Telecommunication Technologies Corp. ("Mobile"), and the Consumer-Business Coalition in their petitions for reconsideration, compensation for subscriber 800 and access code calls should be based on a "bottom up" calculation using a forward-looking, economic cost standard.[4/] The adoption of a forward-looking, economic cost standard is in line with the Commission's approach in the local exchange

---

Order, FCC 97-371 (rel. Oct. 9, 1997) ("Second Report and Order").

3/ 47 U.S.C. § 276(b)(1)(A).

4/ See AT&T Petition for Reconsideration (filed December 1, 1997) ("AT&T Petition") at 7-8; Mobile Petition for Reconsideration (filed December 1, 1997) ("Mobile Petition") at 6-8; Consumer-Business Coalition Petition for Reconsideration (filed December 1, 1997) ("Consumer-Business Coalition Petition") at 25.

market, and in determining prices in many other contexts.[5/] As the Commission recognized in the Local Competition Order, long run incremental cost pricing best replicates the conditions of a competitive market, reduces the ability of incumbents to engage in anti-competitive behavior, and enables all consumers to reap the benefits of competition.[6/] These are the same goals cited by the Commission in its deregulation of the payphone market. Moreover, as the Consumer-Business Coalition demonstrated, the payphone market is not now competitive and is unlikely to become competitive in the near future.[7/] Thus, the compensation formula deemed appropriate in the local exchange market is also applicable to the payphone market.

As AT&T and the Consumer-Business Coalition point out, none of the reasons provided by the Commission for declining to use a forward-looking efficient cost methodology for pricing coinless calls stand up to scrutiny.[8/] First, the Commission had no reason to suggest that inflated compensation for coinless calls is necessary to prevent a reduction in the number of payphones or to increase the deployment of additional payphones.[9/] The 1996 Act and the Commission's rules guard against this possibility by expressly providing for "public interest payphones" without the imposition of additional above-cost subsidies.[10/] Second, the Commission had no

---

5/ See AT&T Petition at 8.

6/ In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15,499 (1996) ("Local Competition Order") at ¶ 679.

7/ See Consumer-Business Coalition Petition at 18-20. In addition, inelastic demand for coinless payphone calls will result in additional revenue for payphone providers, enabling them to continue fending off new entrants and maintain their exclusivity in certain locations.

8/ See AT&T Petition at 9-12.

9/ See Second Report and Order at ¶ 93.

10/ See 47 U.S.C. § 276(b)(2); In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC reason to conclude that the payphone marketplace is competitive based on the existence of "multiple [payphone service providers] operating in many markets" and an industry structure that "allows relatively easy entry and exit."[11/] As the Consumer-Business Coalition already explained, establishing a payphone operation is not a viable option for most 800 subscribers – those hardest hit by the Commission's decision – and true competition in the payphone market will not exist until there is significant point of sale competition.[12/] Third, contrary to the Commission's contention,[13/] the payphone industry can indeed be viewed as a bottleneck because the competition that does exist does not constrain coinless call prices. Finally, under an incremental cost regime, common costs can in fact be recovered.[14/] As the Consumer-Business Coalition noted, the Commission's recognition that the adoption of long run incremental pricing can coincide with the recovery of a reasonable share of common costs belies any assertion that a cost-based standard will prevent common costs from being recovered.[15/]

B. Payphone Provider Costs Were Vastly Overstated in the Payphone Proceeding

Even if the Commission's costing methodology were appropriate, its decision to rely solely on cost data submitted by IPPs was improper. As AT&T explains, the Commission should have examined the costs that local exchange carriers ("LECs") – the owners of the

---

Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) ("Payphone Order") at ¶¶ 277-286.

11/ See Second Report and Order at ¶ 95.

12/ Consumer-Business Coalition Petition at 19-20.

13/ See Second Report and Order at ¶¶ 94, 96.

14/ AT&T Petition at 10-11; Consumer-Business Coalition Petition at 24.

15/ See Consumer-Business Coalition Petition at 24 (citing Second Report and Order at ¶ 95).

majority of the nation's payphones – incur in providing payphone service.[16] Not surprisingly, IPP costs for payphone service are significantly higher than LEC costs.[17] Data from Southwestern Bell Corporation ("SBC") recently obtained by AT&T demonstrates that the overall cost of providing payphone service is significantly lower than the costs relied upon to date by the Commission in setting the default per-call compensation rate.[18] Specifically, an in-depth analysis of SBC's payphone costs reveals the average monthly cost for an SBC payphone to be $93.11 – less than forty percent of the cost figure submitted by the American Public Communications Council ("APCC").[19] SBC's total cost for a coin call therefore amounts to $0.162 – less than half of the $0.40 figure proffered by the IPPs and relied upon by the Commission in setting the default per-call compensation rate.[20] A comprehensive analysis of costs incurred by all payphone providers, including LECs, therefore would yield a significantly lower per-call compensation rate than the $0.284 embraced by the Commission.

Other costs submitted by payphone providers should also be reduced. For example, AT&T explains that although the Second Report and Order increased the payphone compensation rate by $0.01 to cover payments to LECs for implementing FLEX ANI, the true

---

16/ See AT&T Petition for Reconsideration (filed December 1, 1997) ("AT&T Petition") at 12-16. As AT&T's Petition points out, the Commission incorrectly regarded the IPPs inflated costs as "representative of the payphone industry as a whole." Id. at 13.

17/ See id. at 15-16.

18/ Id. at 15.

19/ Id.

20/ Id. SBC's cost data is amply supported by information developed by NYNEX, which, in seeking to increase the local coin rate before the Massachusetts Department of Public Utilities, stated its average per-call payphone costs to be $0.167. See id. at 14-15. Information provided by Sprint in the payphone proceeding reflects similar findings. See id. at 13 (indicating Sprint's average total costs for payphone service to be $100 per month and less than $0.25 per call based on actual call volumes).

cost of providing FLEX ANI is much less.[21] Specifically, the Commission failed to take into account that the United States Telephone Association had lowered its original cost estimate of $600 million to one-tenth that figure, or $61.2 million.[22] Hence, the $0.01 add-on that the Commission has imposed should, at the very least, be reduced to $0.001.[23]

Any suggestion that the default per-call compensation rate for subscriber 800 and access code calls is too low is contrary to the weight of the evidence. Attempts by People's Telephone Company, for example, to persuade the Commission's to add coin mechanism capital costs and bad debt costs should be disregarded.[24] The current rate of $0.284 is substantially in excess of the "fair compensation" standard, and, thus, the Commission should give no credence whatsoever to the extravagant overreaching of the payphone provider petitioners in this proceeding.[25]

II. ADDITIONAL FACTORS SUGGEST THAT AN INCREMENTAL COST-BASED APPROACH IS CRUCIAL TO CULTIVATING AN EQUITABLE AND EFFICIENT PAYPHONE MARKET

A. Call-Blocking is Not a Viable Business Option for Most 800 Subscribers

In adopting a market-based surrogate for 800-number and access code payphone calls, the Commission indicated that 800-number subscribers will wield call-blocking power as leverage

---

21/ See AT&T Petition at 19.

22/ Id.

23/ Id.

24/ See People's Telephone Company Petition for Reconsideration (filed December 1, 1997) at 3-8.

25/ See, e.g., APCC Petition for Reconsideration (filed December 1, 1997) at 13, 15-16 (stating that the per-call compensation rate should be at least $0.358, if not more); RBOC Coalition Petition for Reconsideration (filed December 1, 1997) at 21 (stating that the per-call compensation rate should be at least $0.362.)

against excessive compensation demands made by payphone providers.[26] As pointed out by the Dispatching Parties and the Consumer-Business Coalition, however, call blocking is not a viable business option for many 800-number subscribers because their businesses are dependent upon customers being able to access their number from all payphones.[27] For example, voice messaging and paging services rely on the fact that they can be accessed from any location. That is precisely what makes their services useful.[28] Similarly, trucking companies must make their 800 numbers accessible from all truckstop payphones because their drivers can neither navigate their rigs to other areas, nor spend valuable travel time looking for alternative payphones even if lower prices existed.[29]

In addition, Source One Wireless II, L.L.C. ("Source One"), Mobile, and the Consumer-Business Coalition each correctly state that 800 subscribers cannot avoid paying the $0.284 rate from forty percent of all payphones because the Commission has granted LECs and IPPs an extension of the requirement to provide payphone-specific coding digits until March 9, 1998.[30] In responding to this contention, the Commission has stated that the inability to block calls from these payphones is irrelevant because the call-blocking option is only intended to provide 800-

---

26/ Payphone Order at ¶¶ 17, 49.

27/ See Dispatching Parties Petition for Reconsideration (filed December 1, 1997) ("Dispatching Parties Petition") at 3; Consumer-Business Coalition Petition at 12.

28/ Id.

29/ See Consumer-Business Coalition Petition at 19.

30/ See Source One Petition for Reconsideration (filed December 1, 1997) at 3-4; Mobile Petition at 2-6; Consumer-Business Coalition Petition at 12-13.

number subscribers with negotiating leverage once the default rate is lifted and carriers are free to determine compensation rates on their own.[31/]

The Commission's explanation assumes that the default rate is reasonable and that 800 subscribers have no current need for bargaining tools. As the majority of petitioners point out, however, this assumption is simply wrong.[32/] The $0.284 rate will create steep increases in the operating costs of many 800 subscribers, threatening the operation of small businesses, creating problems for public service organizations, and leading to overall higher prices for consumers.[33/] Even more troubling is the fact that coinless rates will increase without limit once the default rate is eliminated and call-blocking becomes the only option available to 800 subscribers to avoid excessive charges. The Commission should ensure that this result does not occur by applying a fair and even-handed approach to setting rates for non-coin payphone calls.

B. Incremental Cost-Based Pricing is Important Because End Users Have Little Incentive to Exercise Market Discipline When Placing 800-Number Calls

As AT&T and the Consumer-Business Coalition correctly point out, applying a market-based surrogate to coinless calls does not take into account the fact that, with a coin-sent call, the end user payor has the option of choosing whether to make and pay for the call.[34/] By contrast, when a coinless call is being placed, the interexchange carrier or 800-subscriber payor does not have that same choice. End users are not burdened with the need for exercising market discipline

---

[31/] See In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, DA 97-2622, Memorandum Opinion and Order (rel. December 17, 1997) at ¶ 8 (rejecting Petition for Stay of the Personal Communications Industry Association).

[32/] See, e.g., Consumer-Business Coalition Petition at 12.

[33/] See id. at 6-10.

[34/] See AT&T Petition at 5-6; Consumer-Business Coalition Petition at 19-20.

when placing 800-number calls from payphones because 800 subscribers are the ones who pay for those calls. Consequently, without the fair application of incremental cost-based pricing to all subscriber 800 and access code payphone calls, 800 subscribers will experience runaway costs and have little ability, apart from discontinuing 800-number service, to stop them.

C. The Adoption of a Market-Based Surrogate for Non-Coin Payphone Calls Creates Additional Potential for Fraud in the Payphone Market

As noted by the Dispatching Parties,[35/] payphone fraud is a significant concern that must be further addressed by the Commission. In a study conducted by one of the Dispatching Parties, All Office Support, Inc. ("All Office"), approximately 500 fraudulent calls were made to one 800-number alone over the course of seven days.[36/] Extrapolating from the $150.00 that All Office was forced to pay for one week's worth of fraudulent calls, it is clear that payphone fraud has the potential to unfairly extract millions of dollars from the nation's numerous 800 subscribers. The Commission should therefore critically rethink its pricing decision in the payphone context to ensure that it avoids providing additional financial incentives to the perpetrators of payphone fraud.

35/ See Dispatching Parties Petition at 3.

36/ Id.

CONCLUSION

For the reasons stated above, the Consumer-Business Coalition strongly urges the Commission to reexamine its decision to adopt a "market-based" surrogate for payphone 800 calls in lieu of adopting an incremental cost-based rate. Under a truly "fair compensation" approach, the payphone 800 rate should be no more than $0.06 per call.

Respectfully submitted,

THE CONSUMER-BUSINESS
COALITION FOR FAIR PAYPHONE-
800 FEES

Howard J. Symons
Sara F. Seidman
Yaron Dori
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, DC 20004-2608
(202) 434-7300

Daniel R. Barney
Robert Digges, Jr.
ATA Litigation Center
2200 Mill Road
Alexandria, VA 22314-4677
(703) 838-1865

Its Attorneys

AMERICAN TRUCKING ASSOCIATIONS

/s/ ______________________________
Daniel R. Barney
Senior Vice President and General Counsel

AIR TRANSPORT ASSOCIATION OF AMERICA

/s/ ______________________________
James L. Casey
Vice President and Deputy General Counsel

CONSUMER FEDERATION OF AMERICA

/s/ ______________________________
Dr. Mark N. Cooper
Research Director

AAA

/s/ ______________________________
James A. Kolstad
Vice President, Public and Government Relations

NATIONAL NETWORK TO END DOMESTIC VIOLENCE

/s/ ______________________________
Donna F. Edwards
Executive Director

TRUCKLOAD CARRIERS ASSOCIATION

/s/ ______________________________
Lana R. Batts
President

AMERICAN MOVERS CONFERENCE

/s/ ______________________________
Joseph M. Harrison
President

TRANSPORTATION INTERMEDIARIES ASSOCIATION

/s/ ______________________________
Robert A. Voltmann
Executive Director and CEO

NABISCO, INC.

/s/
Orest R. Fiume
Senior Director, Network Services and
Workgroup Technologies

AMERICAN AIRLINES, INC.

/s/
William K. Ris, Jr.
Vice President, Government Affairs

VIRTUAL VOICE CORPORATION

/s/
Monte A. Stern
President

SMALL BUSINESS LEGISLATIVE COUNCIL

/s/
John Satagaj
President

INTERNATIONAL COMMUNICATIONS ASSOCIATION

/s/
Brian R. Moir
Moir & Hardman
2000 L Street, N.W., Suite 512
Washington, DC 20036-4907
(202) 331-9852

Its Attorney

Dated: January 7, 1998

DCDOCS: 121095.1 (2lfr01!.doc)

CERTIFICATE OF SERVICE

I, Tanya Butler, certify that on this 7th day of January, 1998, a copy of the Consumer-Business Coalition's foregoing "Comments on Petitions for Reconsideration" was served on the following parties by either U.S. Mail or messenger (indicated by an "*"):

Tanya Butler

Tanya Butler

Magalie Roman Salas*
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

A. Richard Metzger*
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Kurt A. Schroeder*
Chief, Enforcement Division
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Thomas Power*
Legal Advisor to Chairman Kennard
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Mary McManus*
Legal Advisor to Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Rick Chessen*
Legal Advisor to Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W, Room 826
Washington, D.C. 20554

Kevin Martin*
Legal Advisor to Commissioner Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Kyle D. Dixon*
Legal Advisor to Commissioner Michael Powell
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Jim Casserley*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Michael Carowitz*
Legal Advisor, Enforcement Division
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Rose M. Crellin*
Enforcement Division
Common Carrier Division
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Greg Lipscomb*
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

ITS*
2100 M Street, N.W.
Room 246
Washington, D.C. 20554

Alan S. Tilles
Meyer, Faller, Weisman & Rosenberg
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
(On behalf of Dispatching parties)

Phillip L. Spector
Patrick S. Campbell
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, N.W.
Washington, D.C. 20036
(On behalf of PageMart Wireless, Inc.)

David L. Hill
Audrey P. Rasmussen
O'Connor & Hannan, LLP
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20006
(On behalf of Source One Wireless II, LLC)

Mark C. Rosenblum
Richard H. Rubin
AT&T
295 North Maple Ridge Avenue
Room 325213
Basking Ridge, NJ 07920

Judith St. Ledger-Roty
Kelley Drye & Warren, LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
(On behalf of Paging Network, Inc.)

Ian D. Volner
Heather L. McDowell
Venable, Baetjer, Howard & Civiletti, LLP
1201 New York Avenue, N.W., Suite 1000
Washington, D.C. 20005
(On behalf of Direct Marketing Association)

Thomas Gutierrez
J. Justin McClure
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
(On behalf of Mobile Telecom. Tech.)

Michael K. Kellogg
Kevin J. Cameron
Aaron M. Panner
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1301 K Street, N.W., Suite 1000 West
Washington, D.C. 20005
(On behalf of RBOC/GTE/SNET Coalition)

Bruce W. Renard
General Counsel
Peoples Telephone Company, Inc.
2300 N.W. 89th Place
Miami, FL 33172

Eric L. Bernthal
Michael S. Wroblewski
Latham & Watkins
1001 Pennsylvania Avenue, N.W., Suite 1300
Washington, D.C. 20004
(On behalf of Peoples Telephone Company, Inc.)

Albert H. Kramer
Robert F. Aldrich
Dickstein, Shapiro, Morin & Oshinsky, LLP
2101 L Street, N.W.
Washington, D.C. 20037
(On behalf of APCC)

DCDOCS: 121295.1 (2llb01!.doc)